

**REMARKS**

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1, 3-4, 6, 8-10, 12, 14-28 and 34-45 are pending in this application of which claims 14-28 and 35 are withdrawn as being directed to a non-elected invention. By this Amendment, claims 1, 36 and 45 are amended. No new matter is added. Claims 1, 36 and 45 are the independent claims.

**Entry of After Final Amendment**

Applicants submit that this Amendment After Final Rejection places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art and/or at least place this application in better form for appeal. This Amendment is necessary to clarify the language in the claims, and was not earlier presented because Applicants believed that the prior response(s) placed this application in condition for allowance, for at least the reasons discussed in those responses. Accordingly, entry of the present Amendment, as an earnest attempt to advance prosecution and/or to reduce the number of issues, is requested under 37 C.F.R. §1.116.

**Claim Rejections - 35 U.S.C. § 102**

Claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, 41, and 42 are rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 6,876,749 to Killion et al. ("the Killion reference"). Applicants respectfully traverse this rejection for the reasons discussed below.

Applicants respectfully submit that the Killion reference fails to disclose, or even suggest, *inter alia*, “the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user **without affecting a path the sound will follow** from the one or more sound inlet ports to the one or more microphones,” as recited in amended claim 1.

The Killion reference, on the other hand, merely discloses a switch 10 (corresponding to the electrical control device) operated by the user being controlled by sound inlet ports 7 and 13 to change the configuration, i.e., switching between a directional mode and an omnidirectional mode by sliding the actuator switch 10 between positions where the sound inlet 13 is covered and uncovered. *See col. 3, lines 24-32.* Therefore, due to the sliding action of the switch 10, it will affect the path the sound will follow from the inlet ports to the microphones, changing the acoustical properties.

Moreover, in response to the Examiner's comments in the outstanding Final Office Action (“Response to Arguments” section), the Examiner asserts that “the electrical controlling device (10, 12, 75, 81, 83, 85) can be operated by the user without affecting the shape or the configuration of the sound inlet ports (7, 9, 11, 13, 43, 45, 47, 49, 77, 79) and without affecting the configuration of the channel (11, 47 or 13, 49).”<sup>1</sup> Although Applicants generally agree that the shape or configuration of the sound inlet ports may not be affected, it is submitted that the operation of the electrical controlling device will nonetheless affect the structure of the **path followed by the sound** from the inlet ports when the user operates the device. Such affect may change the acoustical properties of the sound causing distortion and unclear sound.

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<sup>1</sup> Final Office Action mailed February 19, 2010, page 6, paragraph 5.

Accordingly, Applicants respectfully submit that the Killion reference fails to disclose, or even suggest, *inter alia*, “the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user **without affecting a path the sound will follow** from the one or more sound inlet ports to the one or more microphones,” as recited in amended claim 1.

Therefore, contrary to the Examiner’s contention, the Killion reference does not disclose or suggest each and every element of claim 1.

Since the Killion reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(e) and, thus, is allowable. Claims 3, 4, 6, 8-10, 12, 17, and 34, depend from amended claim 1 and, therefore, allowable for similar reasons to those discussed above with respect to claim 1.

Independent claim 36, and dependent claims 37-39, 41, and 42, are also allowable for the similar reasons as those discussed above with respect to claim 1. For instance, claim 36 recites, *inter alia*, “an electrical controlling device forming at least part of the sound inlet port, the electrical controlling device being operable by a user for selectively controlling operation of the microphone assembly and without affecting a path the sound will follow from the sound inlet port to the microphone housing.”

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 102(e) rejection of claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, 41, and 42.

**Claim Rejections - 35 U.S.C. § 103**

Claims 9, 12, 40, and 43-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Killion. Applicants respectfully traverse this rejection for the reasons discussed below.

Claims 9, 12, 40, 43, and 44 are believed to be allowable for at least the reasons set forth above regarding claims 1 or 36. Since claims 9, 12, 40, 43, and 44 are patentable at least by virtue of their dependency on claims 1 or 36, Applicants respectfully request that the rejection of claims 9, 12, 40, 43, and 44 under 35 U.S.C. § 103(a) be withdrawn.

In regard to independent claim 45, Applicants submit that claim 45 is allowable for the similar reasons as those discussed above with respect to claim 1. For instance, claim 45 recites, *inter alia*, “an electrical controlling device that can be operated by a user for selectively controlling the operation of the assembly and without affecting a path a sound will follow from the sound inlet port to the assembly.”

In addition, Applicants submit that the Killion reference fails to disclose or suggest, “the electrical controlling device includes a user operable actuator having a generally rounded outer configuration,” as recited in claim 45. The Killion reference at best discloses a generally rectangular configuration (see FIG. 2A).

Since the Killion reference fails to disclose or suggest each and every element of the rejected claims, Applicants respectfully submit that no *prima facie* case of obviousness has been established with respect to claim 45. Accordingly, Applicants respectfully request that the rejection of claims 9, 12, 40, and 43-45 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

**Request for Interview**

Applicants respectfully request, prior to the issuance of an action on the merits, that the Examiner grant an interview (telephonic or in-person) with Applicants' representative in order to discuss the Office Action, and the differences between the cited prior art and the subject matter cited in the claims.

Applicants' representative will telephone the Examiner in the near future in an attempt to schedule this personal interview. However, as Applicants' representative cannot anticipate when this action will be scheduled for further action by the Examiner, it is requested that the Examiner contact Applicants' representative by telephone, at the number given below should a specific date for the interview have not been scheduled when the Examiner takes this action up for further action. Every effort will be made to meet the Examiner's scheduling preference.

**CONCLUSION**

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

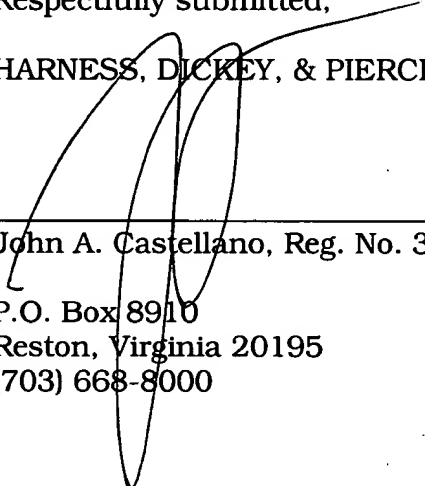
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

  
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